

BILL NO. R-74-03-22

DECLARATORY RESOLUTION NO. R- 13-74

WHEREAS, for many years the City of Fort Wayne, Indiana has owned and operated an electric light works; and

WHEREAS, for many months the City of Fort Wayne, Indiana and the Indiana & Michigan Electric Company have engaged in negotiations looking toward the lease by the Indiana & Michigan Electric Company of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana; and

WHEREAS, the Indiana & Michigan Electric Company has submitted a definite proposed contract for the lease of said municipal electric utility, a copy of which definite proposed contract is attached hereto, identified as "Exhibit A" and incorporated as a part hereof.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

That the Common Council of the City shall, and does pursuant to this Resolution submit to the qualified voters of the City such Resolution including the Contract For Lease at a special election which shall be, and is hereby called and shall be held in Fort Wayne, Indiana, on the 7th day of May, 1974, to be held at the same time and in the same polling places as the primary election on that date, all in accordance with the laws of the State of Indiana in such case made and provided.

William T. Hinga
Councilman

1974 MAR 13 PM 4:44

FILED CLERK'S OFFICE
ROBERT D. HANSON, CLERK

APPROVED AS TO FORM
AND LEGALITY:

Robert B. Co
CITY ATTORNEY

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by Nungai, seconded by Nuckols, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES <u>8</u>	NAYS <u>0</u>	ABSTAINED _____	ABSENT <u>1</u> to-wit:
BURNS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINGA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
KRAUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOSES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCKOLS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, V.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TALARICO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATE: 3-12-74

Charles W. Websterman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. B-13-74 on the 12th day of March, 1974.

ATTEST: (SEAL)

Charles W. Websterman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of March, 1974, at the hour of 4:40 o'clock A M., E.S.T.

Charles W. Websterman
CITY CLERK

Approved and signed by me this 13th day of March, 1974, at the hour of 2:00 o'clock P M., E.S.T.

James A. Randall
MAYOR

Transmittal Of A Resolution Adopted By The Common
Council Of The City Of Fort Wayne, Indiana Pertaining
To The Submission To The Qualified Voters Of
Said City Of Said Resolution Including A Definite
Proposed Contract For The Lease By The Indiana
& Michigan Electric Company Of The Municipal
Electric Utility Owned and Operated By
Said City

FILED CLERKS OFFICE
ROBERT D. HANSON, CLERK
1974 MAR 13 PM 4:43

To: Mr. Robert D. Hanson
Clerk of The Allen Circuit Court
Secretary of the Allen County Election Board
Allen County Court House
Fort Wayne, Indiana

Dear Mr. Hanson:

The Common Council of the City of Fort Wayne, Indiana hereby transmits to you Declaratory Resolution No. R-13-74 adopted by said Common Council at a regular meeting on March 12, 1974 and including as a part of said Resolution a definite proposed contract for the lease to the Indiana & Michigan Electric Company of the municipal electric utility owned and operated by said City.

You are respectfully requested to take such steps as are necessary to insure the submission of said Resolution, including said definite proposed contract at a special election to be held in Fort Wayne, Indiana on the 7th day of May, 1974 in accordance with the laws of the State of Indiana in such case made and provided.


Charles W. Westerman, City Clerk

3-12-74

Bill No. Q-74-03-22

Resolution No. Q-13-74

FORT WAYNE MUNICIPAL ELECTRIC UTILITY

LEASE AGREEMENT

CITY OF FORT WAYNE, LESSOR

And

INDIANA & MICHIGAN ELECTRIC COMPANY, LESSEE

Dated

1974

LEASE AGREEMENT

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LEASE AGREEMENT BETWEEN THE CITY OF FORT WAYNE,
INDIANA AND INDIANA & MICHIGAN ELECTRIC COMPANY

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement"), made this day of , 197 , by and between the City of Fort Wayne, a municipal corporation of the State of Indiana (hereinafter referred to as "City"), acting by and through its Common Council and Mayor, and Indiana & Michigan Electric Company, an Indiana corporation (hereinafter referred to as "Company"), acting by and through its Executive Vice President and Assistant Secretary.

W I T N E S S E T H:

In consideration of the rental, covenants, stipulations and agreements herein contained, City and Company do hereby grant, covenant, stipulate and agree as follows:

ARTICLE I

1.1 The City, upon and subject to the terms and conditions hereinafter contained, does hereby let, demise and lease unto the Company the following described properties and facilities (hereinafter designated as "Leased Property"), to-wit:

(a) All of the electric utility system as now owned, operated and used and useful by the City in the rendering of electric utility service in and adjacent to Fort Wayne, Indiana, including all land, buildings and real estate; production and power plant equipment and facilities; structures; improvements; substations; overhead conductors; underground conduits and conductors; lines; towers; poles; cross-arms; bases; guys; guy wires; cables; ground wires; insulators; transformers; switches; lightning arrestors; meters; services; easements; rights of way; and any and all other property owned, held, used or useful by the City as a part of the aforesaid electric utility system.

It is specifically understood and agreed that the Leased Property shall include, but shall not be limited to, the following:

1. All electric generating facilities of the City, including the Lawton Park Generating Plant and its new boiler and including the Fourth Street Generating Plant. Specific reference is hereinafter made with regard to the use of the Lawton Park Generating Plant which will cover this facility.

2. Facilities used jointly for the purposes of the City's electric utility system and municipal street lighting, with the right in the City to continue the use of such facilities now being made by it for street lighting purposes free of any charges. City shall always maintain the right in itself to make changes and alteration of any kind or character in its municipal street lighting system in compliance with construction, electrical and safety codes.

(b) There shall be excepted and excluded from the Leased Property the following:

1. The street lighting system together with all luminaires, brackets, poles, conductors and other facilities used exclusively for street lighting.

2. All transportation equipment, materials, tools, material handling and other equipment and vehicles used and useful in the operation and maintenance of the City's electric utility system, which will be purchased by the Company at market value upon the terms and conditions to be contained in a written contract of sale to be executed by both parties concurrently with the execution of this Agreement. If the parties fail to agree upon market value, a disinterested appraiser acceptable to both parties shall be appointed to determine said market value and such determination shall be conclusive and binding on the parties; provided, however, if the parties fail to reach an agreement as to an acceptable appraiser, the parties shall make written application to the American Arbitration Association to submit by registered mail to each of the City and the Company the names and addresses of three persons as prospective appraisers, and within fifteen (15) days after receipt of such names the parties shall then choose the appraiser by the City and the Company, in that order, alternately striking a name from the list until only one remains, and he shall be the appraiser to determine said market value and such determination shall be conclusive and binding on the parties.

3. The land, warehouse and storage facilities located at Lafayette and Wallace Streets, together with all office furniture, equipment and fixtures located therein and used and useful in the operation of the City's electric utility system; provided, however, Company shall have the possession and use of the same until the operations of the Leased Property have been integrated by the Company with the operations of its electric utility properties, but in no event shall such possession and use exceed six months after the date the Company takes possession of the Leased Property as hereinafter in Article IV specified, which date of taking such possession shall be referred to throughout the Agreement as "Closing."

4. All office furniture, equipment and fixtures located in the City-County Building at One Main Street and used and useful in the operation of the City's electric utility system.

5. All materials, supplies, fuel, tools and equipment (including material handling equipment) of the City used by it in the operation and maintenance of its electric utility system, which will be purchased by the Company at market value upon the terms and conditions to be contained in a written contract of sale to be executed by both parties concurrently with the execution of this Agreement. If the parties cannot agree upon market value, a disinterested appraiser acceptable to both parties will be appointed to determine said market value and such determination shall be conclusive and binding on the parties; provided, however, if the parties fail to reach an agreement as to an acceptable appraiser, the parties shall make written application to the American Arbitration Association to submit by registered mail to each of the City and the Company the names and addresses of three persons as prospective appraisers, and within fifteen (15) days after receipt of such names the parties shall then choose the appraiser by the City and the Company, in that order, alternately striking a name from the list until only one remains, and he shall be the appraiser to determine said market value and such determination shall be conclusive and binding on the parties.

6. City's cash, bank deposits, bonds, securities, bills, notes and accounts receivable as of the Closing and any funds which City may receive by way of refund in a case pending before the Federal Power Commission docketed as FPC (E-7740).

7. The corporate records and accounts of the City as of the Closing, except as provided in Article XXII hereof.

8. Customer deposits held by the City on the Closing. The refund of such deposits and any interest payable thereon shall be the responsibility of the City, and the Company shall have no liability with respect to such deposits. Upon assumption of City's accounts, the Company will require no initial security deposits. Any deposits thereafter required will be in compliance with Indiana Public Service Commission Regulations.

9. All other properties, either personal or real, not used or useful in the operation or maintenance of City's electric utility system.

ARTICLE II

2.1 During the life of this Agreement, the City agrees to execute such assignments, permits, easements and contracts deemed necessary by the Company for it to properly operate and maintain the Leased Property in connection with the Company's electric utility system now existing or as same may hereafter exist during the life of this Agreement, including those authorizing the Company to trim and cut trees located on City property within the City and to use the streets, alleys and public places of the City for the construction, maintenance and operation of a complete and adequate electric utility system to render adequate and reliable service to the customers; and the City shall take any and all further action to facilitate and provide the Company's rendering of adequate and reliable electric service to the customers; provided, however, any such granting by the City shall comply with all reasonable rules and regulations imposed by the Board of Public Works on other utilities.

2.2 The Company shall not be obligated to assume, and the City shall hold the Company harmless from any and all contracts, agreements, obligations and commitments of the City existing or in force on the Closing unless otherwise stated herein or specifically assumed by the Company under instruments in writing. Company has already agreed to assume City's obligation set forth in an instrument dated March 8, 1974, marked Exhibit "A", attached hereto and hereby incorporated herein by reference. In addition to assumption of City's obligation under said exhibit, any and all commitments, purchase orders and contracts entered into by the City in connection with its electric utility operation and incidental to the completion of construction work in progress and unfinished at the time of Closing, in an aggregate amount not to exceed Ten Thousand (\$10,000) Dollars, shall be assumed by the Company; provided, however, any such commitment, purchase order or contract entered into by the City after the date of this Agreement, and prior to the Closing, in an amount in excess of One Thousand (\$1,000.00) Dollars, shall not be assumed by Company unless agreed to by Company in writing separate from this instrument.

ARTICLE III

3.1 The Company agrees that subject to the Company's general policy as to retirement at age 65, all regular, full-time employees of the City engaged in the operation and maintenance of the Leased Property on the Closing will be offered full-time employment by the Company in the Fort Wayne area. Such employees of the City who elect to work for the Company will have jobs offered them at the same rates of pay provided employees of the Company for performing comparable work. Generally, the rates of pay and the benefits provided by the Company for all such employees will equal or exceed the rates of pay and benefits such employees received from the City on February 15, 1974. Such employees will also receive credit for past service with the City in the application of Company's life insurance, hospital and medical insurance and vacation and sick leave benefit programs to such employees.

3.2 City represents and agrees that employees of the City's electric utility system are not under a single pension plan, nor are all such employees covered by a pension plan; that certain employees participate in a municipal plan; that their payments into this plan have not been separately accounted for and funded; and that there are certain other employees who are under the Indiana Public Employees Retirement Fund. The Company represents and agrees that it will retain the services of Lincoln National Life Insurance Company to develop a plan of pension benefits for all those employees under the municipal plan, which proposed plan will use the combination of (i) all funds collected by City from employees and all funds owed by the City arising from its obligations to the municipal plan as above provided, and (ii) the benefits they will receive under the Company's pension plan; that such plan is to be designed so that on retirement at age 65 of each employee, who elects to work for the Company and continues his employment until the age 65, will receive benefits which are greater than those currently scheduled under the City's present program; that the plan to be so developed will provide greater benefits to such employees upon retirement at age 65 than City's present plan; that Company will deduct from its monthly lease rental payments those amounts which represent both the City's financial obligations to the municipal plan and the monies the City has collected from employees for pension purposes. The deductions will be computed by Lincoln National Life Insurance Company on an actuarial basis and will represent actual expenditures by the Company in paying pensions to City employees who elect to work for the Company and subsequently retire at age 65; that Lincoln National Life Insurance Company will also be retained to develop a plan of pension benefits for all those employees under the Indiana Public Employees Retirement Fund, which plan will use the combination of (i) all funds to which such employees are entitled under said retirement fund, such funds to be obtained by them from such retirement fund other than those referred to in Sec. 3.3 below and delivered by them to the Company, and (ii) the benefits they will receive under the Company's pension plan; and that the plan to be so developed will provide comparable benefits to the benefits to be provided for those employees participating in the said municipal plan.

3.3 Certain other City employees who have already established eligibility for pension benefits under the Indiana Public Employees Retirement Fund may wish to remain members of that Fund and receive those pension benefits when they retire from the Company at age 65. For those employees Lincoln National Life Insurance Company will develop a supplementary Company pension plan which will provide comparable benefits to the benefits to be provided for those employees participating in the said municipal plan.

3.4 The City has a Severance Pay Plan at retirement for employees who have completed five (5) consecutive years of service immediately prior to their retirement date. The difference in pension benefits between the existing City retirement plans and the retirement plans to be developed by Lincoln National Life Insurance Company shall be computed for the City employees first two (2) years of retirement. The excess in benefits created by the Lincoln retirement plans over the present City retirement plans shall be deducted from the said severance pay obligation. Any amounts still owing after that deduction shall be paid by Company to the City employee upon retirement. The liability of the City under City's Severance Pay Plan will be assumed by the Company at the time of Closing upon payment by the City of Twenty-five Thousand (\$25,000.00) Dollars.

ARTICLE IV

Possession and operation of the Leased Property (referred to as "Closing" throughout the Agreement) shall be delivered by the City to the Company no later than noon on the first day of the third calendar month following the month when the Agreement is properly authorized and executed by City and Company and is legally effective. At the Closing, the Company shall take possession of the Leased Property and shall commence the operation and maintenance of the Leased Property, and the rental to be paid by the Company on the Leased Property as hereinafter set forth shall commence at the same time. From and after the Closing, and subject to the proration provisions of the Agreement, the Company shall have the right to demand, receive and retain for its own purposes all accounts receivable, rents, revenues, income and benefits accruing from the operation of the Leased Property after the Closing Date and continuing until the termination of this Agreement.

ARTICLE V

The Company covenants with the City that the Public Service Commission of Indiana has approved the leasing of the Leased Property at the rental and on the terms as provided in this Agreement pursuant to and in accordance with IC 8-1-2-84 (54-510 Burns Indiana Statutes).

The City covenants with the Company that the City, pursuant to and in accordance with IC 18-1-21-1 (48-720 Burns Indiana Statutes), has submitted at a proper election to the qualified voters of Fort Wayne, this Agreement by resolution of the Common Council of the City, and a majority of the votes cast at such election was in favor of such resolution and the leasing of the Leased Property as provided in the Agreement; that the Common Council of the City by ordinance confirmed such resolution; that the City has the legal right to execute this Agreement; that the City has good and sufficient rights, titles and interests in and to the Leased Property for the leasing of same under this Agreement; and that the Company shall have quiet and peaceable possession and use of the Leased Property so long as it shall carry out and perform its obligations under this Agreement.

ARTICLE VI

The Company shall pay to the City of Fort Wayne Board of Public Works as custodian of City's Electric Utility, during the original term of the Agreement, which begins with the date of Closing and terminates thirty-five (35) years thereafter as provided by Article XXIV hereafter, the following rentals for the possession, operation, and use of the Leased Property; (i) an annual rental of One Million four hundred forty thousand (\$1,440,000.00) Dollars per year for the first five (5) years of such term; (ii) an annual rental of One Million four hundred ninety thousand (\$1,490,000.00) Dollars for the second five (5) years of such term; (iii) an annual rental of One Million five hundred forty thousand (\$1,540,000.00) Dollars for the third five (5) years of such term; (iv) an annual rental of One Million five hundred ninety thousand (\$1,590,000.00) Dollars per year for the fourth five (5) years of such term; (v) an annual rental of One Million six hundred forty thousand (\$1,640,000.00) Dollars for the fifth five (5) years of such term;

(vi) an annual rental of One Million six hundred ninety thousand (\$1,690,000.00) Dollars for the sixth five (5) years of such term; and (vii) an annual rental of One Million seven hundred forty thousand (\$1,740,000.00) Dollars for the seventh five (5) years of such term. Each year's rental shall be due and payable in equal monthly installments in advance on the first day of each and every month during said term with a proper apportionment for the last partial month at the termination of the Agreement, if applicable. Rental payments made at any time within thirty (30) days after the due date shall not be delinquent.

ARTICLE VII

The City agrees to pay all outstanding charges, obligations, debts, claims and expenses of every kind and nature relating to the Leased Property at the date of Closing, including all operating and maintenance costs and expenses, accrued, incurred, arising from or in any way connected with work already performed on the Leased Property prior to the date of Closing. The paragraph, however, shall not abridge any obligations of the Company as set forth in Article II and Article III above.

ARTICLE VIII

During the first calendar month following the date of Closing, all meters in service within the Leased Property will be read jointly by the City and the Company on City's regular reading dates. The Company will render bills based upon such readings and collect monies in payment thereof. The Company will then prorate the revenues so billed and collected in such a manner that it will retain only the prorated portion of the revenue for service supplied on and after the date of Closing. The Company will, within ninety (90) days after rendering bills to the customers, pay to the City the prorated portion of revenue as billed and collected for service rendered prior to the date of Closing. The Company will also pay to the City the prorated portion of the revenue from bills not collected within ninety (90) days from the date of Closing except this revenue will be reduced in proportion to the City's collection history for the twelve months prior to Closing. The City shall have the right to make an independent audit of these proceedings.

ARTICLE IX

The City covenants and agrees with the Company that it will not sell, encumber or otherwise impair or affect Company's possession, operation of, or interest in, the Leased Property during the term of this Agreement, except as herein provided. The Company further agrees with the City that it will not sell, encumber or otherwise impair or affect City's interest in the Leased Property during the term of this Agreement, except as herein provided.

ARTICLE X

10.1 The Company shall, from and after the date of Closing, have full and complete control of the Leased Property except as herein provided, and shall, subject to the terms and provisions herein set forth, operate and maintain the Leased Property in such manner as it determines in the exercise of reasonable judgment to provide adequate and reliable electric service to the customers.

10.2 Except for claims arising out of the acts caused by the affirmative negligence of the City or its representatives, the Company shall indemnify, defend and hold harmless the City, at the Company's expense, against all claims, expenses and liabilities arising from (a) the management, operation and maintenance of the Leased Property by the Company; (b) any default by the Company in the observance or performance of this Agreement; (c) any act or negligence of the Company, or its agents, contractors, employees or licensees, arising out of the management, operation and maintenance of the Leased Property by the Company, concerning which a claim is made against the City or the Leased Property. The City shall have a right, if it sees fit, to participate in such defense at its own expense, but the participation by the City in its own defense shall in no way abrogate or restrict the indemnity or responsibility imposed upon the Company by this paragraph. The City shall promptly notify the Company of any and all of the aforesaid claims asserted against the City.

10.3 Neither the City nor its agents or representatives have made any representations other than as provided or expressed in this Agreement with respect to the Leased Property, or any rights, easements, licenses, contracts or other

matters which are the subject of this Agreement. The taking of possession of the Leased Property by the Company shall be conclusive evidence that the Company accepts the same "as is" and will make no claims against the City with respect to the condition of the Leased Property, the validity of any agreement, or the title or restrictions that are imposed, or might be imposed, upon any of the Leased Property; provided, however, that the foregoing provisions of this Paragraph 10.3 shall in no way abrogate or impair any of the covenants, agreements, or representations of the City appearing elsewhere throughout this Agreement, and in the event of any such conflict or variation the covenants, agreements and representations of the City appearing elsewhere in this Agreement shall control and govern.

ARTICLE XI

Air pollution regulations will effectively prohibit the continued use of the existing coal fired Lawton Park generating facilities after January 1, 1975. The availability of natural gas and low sulfur fuel oil is restricted at the present time. In the event that the Company can obtain an allocation of either natural gas or low sulfur fuel oil along with a firm commitment for the supply of same by January 1, 1976, the Company will then complete the installation of the new gas/oil fired boiler at the Lawton Park generating plant. All expenditures made by the Company in the completion of said installation shall constitute "Betterments, Enlargements and Extensions" as hereinafter provided in Article XVII. These facilities will then be available for emergency stand-by service. The Company will maintain the Fourth Street Generating Unit so that it will be available for emergency stand-by service. The Company will also install the necessary facilities for purposes of maintaining emergency service to the filtration plant and the sewage treatment plant.

ARTICLE XII

It is mutually understood and agreed that in accordance with law the City has not been, and will not be, subject to property taxes on the Leased Property, but that the Company's leasehold interest in the Leased Property will be subject to

property taxes from and after it takes possession of the Leased Property and until the termination of the Agreement as herein provided. The Company agrees to pay all such property taxes legally and properly assessed and determined, as and when due. In addition, the Company will and by these presents does hereby agree to indemnify and hold the City harmless of and from any claim for any lien or encumbrance, obligation, or suit with respect to the payment of any such taxes, either upon the Leased Property or upon any betterments, enlargements or extensions to the Leased Property made by the Company.

ARTICLE XIII

13.1 The Company, subject to the provisions of this Agreement and while it is in possession of the Leased Property, shall at its own expense perform such maintenance as is necessary to maintain, preserve and keep the Leased Property in good working order and condition in keeping with the National Electric Safety Code and standards followed by the electric utility industry to assure the present customers of City Light an adequate and reliable supply of electric power. Expenditures classified as maintenance will be determined by the Uniform System of Accounts adopted by the Public Service Commission of Indiana for electric public utilities.

13.2 The Company agrees that the Board of Public Works shall have the authority and responsibility to continue to scrutinize the control and use of the Leased Property to see that it is properly maintained in accordance with this Agreement. If, in the judgment of the Board, the Company is not maintaining the Leased Property or is wasting the Leased Property, then the Board shall be responsible for reporting such findings in writing to the Common Council. It shall be the Board of Public Works' duty to enforce the provisions of this Agreement.

ARTICLE XIV

The Company, while in possession of the Leased Property, shall carry and maintain at its own cost and expense such types of insurance on the Leased Property

and in such amounts as the Company ordinarily carries on its properties of like kind. In the event loss, damage or destruction shall occur to the Leased Property, the proceeds of such policy or policies by reason thereof shall be applied by the Company in repairing, restoring or acquiring substitute or other property for the Leased Property lost damaged or destroyed. In the event the cost of such repairs restorations or substitutions shall be in excess of the proceeds of such insurance, such excess costs shall be borne by the Company. In the event the cost of such repairs, restorations or substitutions shall be less than the proceeds of such insurance, such proceeds shall be reinvested in Leased Property by the Company.

ARTICLE XV

In the event the Leased Property, or any part or parts thereof, is condemned by a public or private agency under the right of eminent domain, the Company shall apply the proceeds from such condemnation to the acquisition of substitute or other property for the Leased Property so condemned. In the event that the cost of such substitute or other property shall be in excess of the proceeds from the condemnation, such excess cost shall be borne by the Company with the right to recover by any and all proper methods, provided Company shall not have any right of recovery against City except as provided by law. Any excess costs borne by the Company shall be classified as "Betterments" as listed in Article XVII and shall be the property of the Company. In the event that the cost of such substitute or other property shall be less than the proceeds from the condemnation, such net proceeds shall be reinvested in Leased Property by the Company.

ARTICLE XVI

The average rate paid by all residential, commercial and industrial customers in Fort Wayne is about the same as paid by all customers served by the Company in Indiana. In 1973, its Fort Wayne customers paid an average rate of 1.688¢ per kilowatthour versus 1.678¢ per kilowatthour paid by all its Indiana customers.

At this time, the Company has no current plan to file with the Public Service Commission of Indiana a request for a rate increase, nor will it use the execution of the lease herein as a basis to file for such a rate increase.

The Company, as well as other electric suppliers, is subject to increasing costs and to severe environmental regulations which will require the expenditure of very large sums of money for new equipment and which also will result in much higher operating costs. The Company will exert all reasonable efforts to avoid having to meet these costs with rate increases. But, in any event, no increase in rates affecting Fort Wayne customers would be sought which was not similarly applicable to all customers of the Company in Indiana.

ARTICLE XVII

The Company, at its own cost and expense, shall make such betterments, enlargements, extensions and retirements to the electric distribution system of the Leased Property as it may deem necessary, advisable and economically feasible in keeping with the National Electric Safety Code and other standards generally followed throughout the electric utility industry to assure the present customers served from the Leased Property an adequate and reliable supply of electric power. Expenditures classified as betterments, enlargements and extensions will be determined by the Uniform System of Accounts adopted by the Public Service Commission of Indiana for electric public utilities and are hereinafter designated as "Betterments, Enlargements and Extensions."

ARTICLE XVIII

18.1 The City shall sell, abandon or otherwise dispose of any of the Leased Property whenever in the Company's judgment the same shall be worn out or obsolete, or no longer required or useful for and in connection with the operation or maintenance of the Leased Property (herein referred to as "obsolete"); provided, the Company shall not declare more than five (5%) percent of the original cost of the Leased Property obsolete in any one given year, and/or shall not replace more than five (5%) percent of the original cost of the Leased Property in any one given

year unless a force Majeur intervenes and forces such accelerated replacement, or unless the City shall agree in writing to a declaration of more than five (5%) percent of the original cost of the Leased Property as obsolete.

18.2 The sale of such Leased Property which shall have been declared to be obsolete shall be conducted by the Company and the net proceeds of the sale, after deducting the cost of the sale and removal costs incurred by the Company incident to the sale, shall be disbursed as follows:

(a) The Company may reinvest the net proceeds of the sale in additional property which shall be added to and become a part of the Leased Property and subject to all the terms, conditions and provisions of this Lease Agreement providing for Leased Property, or

(b) In the event that the funds are not reinvested by the Company within three months, to the extent that the sums are not so reinvested, the Company will cause said sums to be placed in an escrow account for the benefit of the City and shall pay the City a sum equal to seven percent (7%) per annum interest on the funds deposited in such escrow account until they have been reinvested in additional property to be made part of the Leased Property in accordance with subparagraph (a) above.

ARTICLE XIX

19.1 Betterments, Enlargements and Extensions of the Leased Property made by the Company from its own funds will be and remain the property of the Company notwithstanding affixation to the Leased Property.

19.2 The Company represents and warrants that any such Betterments, Enlargements and Extensions of the Leased Property shall be and remain free and clear of any and all liens, claims or other encumbrances of any kind or nature affecting such Betterments, Enlargements and Extensions of the Leased Property during the original term of this Lease, or any extension thereof, except for any and all liens, claims or other encumbrances established by or related to the Company's Mortgage and Deed of Trust, dated as of June 1, 1939 to Irving Trust Company and Frederick G. Herbst, Trustees and in any Indentures Supplemental thereto, (hereinafter called "Mortgage Liens").

19.3 Such Betterments, Enlargements and Extensions shall be and remain charged with a lien in favor of the City as additional security for the enforcement of all obligations of this Agreement to be kept and performed by the Company. Such lien shall be prior to all other contracts, liens or other encumbrances whatsoever except that City agrees its lien shall be subordinate and subject to the Mortgage Liens and Company shall have the right to encumber such Betterments, Enlargements and Extensions under said Mortgage Liens.

19.4 In the event that any such Betterments, Enlargements or Extensions of the Leased Property made by the Company should become the property of the City, either by reason of the default of the Company or by reason of the exercise of the Option to Purchase conferred upon the City by Section 25.1 hereof, the Company represents and warrants that such Betterments, Enlargements and Extensions made by the Company shall become the property of the City, free and clear of any such Mortgage Liens, and the Company shall indemnify and hold the City harmless to the extent that the City is required to discharge any such lien, claim or encumbrance upon the acquisition of the Betterments, Enlargements and Extensions. Any obligation of the Company with respect to such lien, claim or encumbrance shall continue to be the obligation of the Company and such obligation of the Company shall survive the exercise of the option granted the City under Section 25.1 hereof.

ARTICLE XX

Any joint use agreement, permit, easement or lease in any way relating to the Leased Property, which provides for pole attachments, shall be assigned by the City to the Company at the Closing, and if not assignable shall be terminated by the City as of the Closing or as soon as practicable thereafter; provided, however, that the City shall have the right to pole attachments, free of any charges for such attachments, for its police, fire, traffic and street lighting systems, except to the extent that any such attachments in the opinion of the Company unreasonably interfere with the Company's operation of the Leased Property. The Company will have a right to charge for C.A.T.V. pole attachments, the same rate that they charge

in other second class cities such as Marion, Muncie and South Bend. The Company will not interfere with City's rights to franchise a C. A. T. V. installation, and the Company may lease the poles to the franchisee in accordance with the above terms.

ARTICLE XXI

21.1 The Company will provide the electric energy for the City's street lighting system and will file and seek approval of the Public Service Commission of Indiana for a rate to supply this energy at one (1¢) per kilowatthour with the Company's fuel clause adjustment as filed and approved by the Public Service Commission of Indiana. As previously indicated Company has no current plans to file a petition for rate increase with the Public Service Commission of Indiana, and agrees to give City at least sixty (60) days written notice of any intention by Company to file for a rate increase in the future.

21.2 City agrees that failure of the City to pay for any and all classes of electrical service provided by the Company to the City shall constitute a default on the part of the City. In the event of such default and the failure by the City to correct the default after having been given thirty (30) days prior written notice thereof by Company, the amount owing by City for such service shall be deducted from the rental then due to City from Company.

ARTICLE XXII

The City shall deliver to the Company copies of all available maps, plats, surveys, plans, drawings, specifications and original invoices and other historical data of the City, relating to the original cost of the Leased Property. City also shall make available to the Company copies of all books, accounts, records and documents concerning the Leased Property which might be required by or be useful to the Company in setting up its books of accounts with respect to, or in the operation of, the Leased Property, it being understood that the Company shall not exercise such privileges otherwise than reasonably and with due regard to the convenience of the City.

ARTICLE XXIII

In order that the Leased Property may be properly identified for the permanent records of the City and the Company, the City, prior to Closing, shall prepare and deliver to Company for its approval detailed property records and maps of the City's electric utility system comprising all of the Leased Property. Upon such records and maps being agreed upon by the City and the Company at the Closing, the same shall be binding on both the City and the Company in all future dealings with respect to the Leased Property.

ARTICLE XXIV

24.1 The original term of this Agreement shall be for thirty-five (35) years from the date of Closing.

24.2(a) At the expiration of the original term of this Agreement shall then be in full force and effect and the Company shall have performed all of its terms and conditions, the Company shall have the option to extend this Agreement, upon the same terms and conditions, excluding the provision for rent, for an extended term of fifteen (15) years to commence on the day following the expiration of the original term of this Agreement and continuing thereafter for fifteen (15) years (Hereinafter designated as "Extended Term"). If this Agreement shall have been so extended, then at the expiration of such Extended Term, the Company and the City shall have all their same respective rights, options, and provisions, and be subject to all their same respective conditions, obligations and covenants, as are herein provided for at the termination of the original term of this Agreement.

(b) The Company may extend the term of this Agreement for the Extended Term as is provided for in subparagraph (a), by the delivery of written notice to the City not less than six (6) months prior to the expiration of the original term, which written notice shall advise the City of the intention of the Company to extend the term during the option period. The Company and the City shall then have six (6) months within which to negotiate a new rental to be agreed upon between the City and the Company as applicable to the Extended Term of this Agreement, which rental shall be approved by the Public Service Commission of Indiana. In

the event that such rental is agreed upon by the City and the Company and is approved by the Public Service Commission of Indiana, it shall be reduced to writing and attached to and made a part of this Agreement. In the event that the City and the Company shall fail to agree in writing with respect to the rent during the Extended Term of this Agreement, then this Agreement shall expire on the expiration date of the original term hereof.

ARTICLE XXV

The parties hereto agree that upon the expiration of the original term of this Agreement, if not extended as herein provided, or at the expiration of the Extended Term if extended as herein provided, (hereinafter referred to as the "Termination Date"):

The City shall first have the option to acquire all such Betterments, Enlargements, and Extensions of the Leased Property made by the Company during the term of this Agreement and referred to in Articles XVII and XIX hereof as are owned by the Company at the Termination Date. The price to be paid by the City shall be the original cost depreciated to the Company of all such Betterments, Enlargements and Extensions made by the Company. Notice of intention to exercise this option must be given by the City to the Company at least twelve months (12) prior to the Termination Date. If the City chooses to exercise this option, it shall make payment in full for all such Betterments, Enlargements and Extensions on or before the Termination Date.

"Original cost depreciated to the Company", for purposes of this paragraph will be determined by the Uniform System of Accounts as adopted by the Public Service Commission of Indiana for electric utilities and in force and effect at the time of such entries.

For the purpose of determining what shall constitute Betterments, Enlargements and Extensions of the Leased Property made by the Company during the term of this Agreement, the Company will keep a separate ledger of accounts itemizing all Betterments, Enlargements and Extensions of the Leased Property and

separating such expenditures from expenditures classified as maintenance in accordance with the Uniform System of Accounts adopted by the Public Service Commission. The separately stated ledger of accounts for "Betterments, Enlargements and Extensions of the Leased Property" will be separately maintained and segregated from the other accounts of the Company and will be depreciated separately and regularly in accordance with the Uniform System of Accounts adopted by the Public Service Commission of Indiana, as from time to time in effect during the original term of this Agreement or the Extended Term.

ARTICLE XXVI

26.1(a) The following events (hereinafter called "Events of Default") shall constitute events of default:

1. If the Company shall at any time make default in the payment of any rental and such default shall continue for a period of thirty (30) days.
2. If the Company shall make default in the performance of any other covenant or obligation contained in this Agreement and such default shall continue for sixty (60) days after notice of such default has been given in writing to the Company by the City.
3. If any execution or attachment shall be issued whereby any of the Leased Property shall be taken or attempted to be taken by someone other than the City and the same shall not be vacated within three (3) years.
4. If the Company shall abandon the Leased Property (except as herein permitted).
5. If a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of the Company under the Bankruptcy Act, or any other federal or state law relating to bankruptcy or insolvency, or appointing a receiver or decreeing or ordering the winding-up or liquidation of the affairs of the Company and any such decree or order shall remain in force undischarged and unstayed for a period of sixty (60) days, unless, prior to the expiration of such period, all the obligations of the Company hereunder shall have

been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by the trustees.

6. If Company shall institute proceedings to be adjudicated bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or corporate action shall be taken by the Company in furtherance of any of the aforesaid purposes, unless, prior to the expiration of a period of sixty (60) days following any such event, all the obligations of the Company hereunder shall have been duly assumed in writing, pursuant to court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees.

26. 1(b) Upon the occurrence of any such Event of Default and during its continuance beyond any period of grace herein specified in respect thereof, the City may, in its discretion:

1. Sue for and require specific performance of this Agreement; or
2. Upon giving the Company thirty (30) days' notice in writing, terminate and cancel this Agreement and take possession of the Leased Property, including all Betterments, Enlargements and Extensions made by Company, and required to furnish to the then customers served from the Leased Property the same degree of electric service as existed at the time of the breach of this Agreement, either with or without process of law.

26. 2(a) In case of any such termination and cancellation prior to expiration of the original term or Extended Term of this Agreement, the City shall be entitled to receive from the Company, as and for liquidated damages, an amount (said

amount of damages being hereinafter called the "Liquidated Damages") equal to the sum total of the following:

1. The amount of any rental payments then accrued and unpaid.
2. All costs, including attorneys' fees, directly incurred by the City as a consequence of its entering into this Agreement and all costs, including attorneys' fees, directly incurred by the City in taking possession of the Leased Property, including Betterments, Enlargements and Extensions thereof, which are required to furnish electric service to the then customers served from the Leased Property.
3. In determining costs directly incurred by the City as a consequence of entering into this Agreement and/or taking possession of the Leased Property, the parties will first seek to negotiate the amount of said costs. If the parties fail to arrive at an agreement as to the amount of said costs, consideration will be given to the rent heretofore paid by the Company, and the Company will be given whatever credit is determined against said costs based upon such consideration.
4. All costs directly incurred by the City in restoring its electric utility distribution system to a condition in which it could be operated as a system separate from that of the Company and adequate to provide electrical service to the customers served from the Leased Property at the date of such cancellation.
5. The amount required to pay in full any liens or encumbrances, excepting the Mortgage Liens specified in Article XIX, Sec. 19.2 hereof, encumbering the Betterments, Enlargements and Extensions of the Leased Property which becomes the property of the City as hereinbefore provided.

ARTICLE XXVII

27.1 Upon reversion of the Leased Property, including Betterments, Enlargements and Extensions, to the City, as provided in Article XXVI, Section 26.1(b)2, for any of the causes specified in Article XXVI, Section 26.1(a), the Company (to the full extent of its ability to do so) shall assign to the City each and all of the contracts, agreements and instruments of every nature assigned by the City to the Company under and pursuant to the Agreement, and any and all contracts, assignments and

instruments of every nature which the Company has from third parties relating solely to the operation of the Leased Property; and the Company shall execute all necessary instruments and papers to make such assignments effective, and shall return and/or transfer to the City all maps and related documents essential to enable the City to manage and administer the Leased Property as a viable electric utility system; and, the City will assume any contracts, agreements or instruments of any nature which the Company has made with, or acquired from, third parties in relation to the Leased Property, as well as such contracts or instruments as relate to the ordinary course of the operation and maintenance of the Leased Property.

27.2 Upon reversion of the Leased Property to the City, upon the termination of the Agreement at the end of its original term or Extended Term, as the case may be, all revenue, income, accounts receivable, profits and rents in any way relating to the Leased Property prior to such reversion and all property of every kind and nature acquired and owned by the Company relating to the Leased Property, including Betterments, Enlargements and Extensions by the Company, shall be and remain with the Company, and the City shall execute all instruments and papers required by the Company for effecting the Company's receipt, ownership and possession of the same.

27.3 Upon reversion of the Leased Property by reason of Events of Default or the termination of the original term or Extended Term of the Agreement, as the case may be, the Company agrees to furnish to City all its electric power requirements at the lowest rates approved by the regulatory authority having jurisdiction for similar classes of service in the Company's Indiana service area.

27.4 In the event the Company ceases to operate the Leased Property, the Company shall deliver to the City copies of all available records, maps, plats, surveys, plans, drawings, specifications and original invoices and other historical data relating to the Leased Property.

In the event the Betterments, Enlargements or Extensions of the Leased Property made by the Company should become the property of the City by reason

of default of the Company as herein provided or the exercise of the Option by the City to Purchase as herein provided, the same types of instruments, material and information with respect to the Betterments, Enlargements and Extensions shall be made available to the City as those hereinabove described relating to the Leased Property.

27.5 Company also shall make available to the City copies of all books, accounts, records and documents concerning the Leased Property which might be required by or be useful to the City in setting up its books of accounts with respect to the Leased Property, it being understood that the City shall not exercise such privileges otherwise than reasonably and with due regard to the convenience of the Company.

ARTICLE XXVIII

28.1 The Agreement, and all grants, assignments, contracts and instruments of every kind and nature made pursuant to this Agreement shall be binding upon and inure to the benefit of, the respective successors and assigns of the City and of the Company.

28.2 Company shall pay all reasonable costs payable to third parties and attorneys' fees incurred by or against the City in enforcing the obligations of the Agreement. Such attorneys' fees shall, for purposes of the default and damage provisions contained herein, be considered an element of the Liquidated Damages.

ARTICLE XXIX

No failure or delay on the part of either party hereto in the performance of any covenant or condition of this Agreement shall constitute a default if such delay or failure is caused by any fire, riot, strike, tornado, weather conditions, war, or other unavoidable casualty, accident, or by any lawful statute or governmental regulation, or order of any court or regulatory body, and the time for performing any covenant, agreement or provision contained in this Agreement shall be extended by such time as the performance thereof may have been delayed or prevented by reason of any of the foregoing; provided, however, the foregoing provisions shall not be applicable to the payment of rent.

ARTICLE XXX

The City and the Company hereby covenant and agree that this Agreement or a Memorandum of Lease relating to this Agreement shall be recorded to comply with I. C. Sections 32-1-2-16 and 32-1-2-31, Burns Indiana Statutes 56-119 and 56-136.

ARTICLE XXXI

If any of the provisions of this Agreement shall contravene, or be invalid under, the laws of this State, County or jurisdiction where used, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid in this particular State, County or jurisdiction, and the rights and obligations of said City and Company shall be construed and enforced accordingly; provided further that the City and/or the Company shall have the right prior to Closing to void the Lease upon thirty (30) days' notice in writing in the event any of the provisions are held to be invalid or are modified as herein provided.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana (City) has caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by the Mayor thereunto duly authorized, and attested by its City Clerk in behalf of the City, and its seal to be affixed; and Indiana & Michigan Electric Company (Company) has likewise caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Executive Vice-President and attested by its Assistant Secretary thereunto duly authorized, and its corporate seal to be affixed, all on the day and year first above written; this Agreement being executed in duplicate.

CITY OF FORT WAYNE, INDIANA

By _____
(Ivan A. Lebamoff)
Mayor

ATTEST:

(Charles W. Westerman)
City Clerk

INDIANA & MICHIGAN ELECTRIC CO.

By _____
(R. M. Kopper)
Executive Vice-President

ATTEST:

(A. W. Lindahl)
Assistant Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I, _____, A Notary Public in
and for the County and State aforesaid, duly commissioned
and qualified, do hereby certify that, on this _____
day of _____, 1974, before me personally
appeared Ivan A. Lebamoff and Charles W. Westerman, to me
well known and personally known to me to be, respectively,
the Mayor and City Clerk of the City of Fort Wayne, a muni-
cipal corporation of the State of Indiana, lessor in the fore-
going Lease Agreement, and the persons who, as such Mayor
and City Clerk, respectively, of said City, executed the said
Lease Agreement in the name and for and on behalf of said
City of Fort Wayne; and said Ivan A. Lebamoff and Charles W.
Westerman, acknowledged that, as such Mayor and City Clerk,
respectively, of said City of Fort Wayne, they executed the said
Lease Agreement in the name and for and on behalf of said City
as their free and voluntary act and deed and the free and
voluntary act and deed of said City, pursuant to due and
proper authorization of the Common Council of said City in
accordance with the law in such case made and provided.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my notarial seal, on the day, month and year aforesaid.

Notary Public

My Commission expires:

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I, _____, A Notary Public in
and for the County and State aforesaid, duly commissioned
and qualified, do hereby certify that, on this _____
day of _____, 1974, before me personally
appeared R. M. Kopper and A. W. Lindahl, to me well known and
personally known to me to be, respectively, the Executive Vice-
President and an Assistant Secretary of Indiana & Michigan
Electric Company, a corporation of the State of Indiana, lessee
in the foregoing Lease Agreement, and the persons who, as
such Executive Vice-President and Assistant Secretary, respect-
ively, of said Company, executed the said Lease Agreement in
the name and for and on behalf of said Company; and said R. M.
Kopper and A. W. Lindahl, acknowledged that, as such Executive
Vice-President and Assistant Secretary, respectively, of said
Company, they executed the said Lease Agreement in the name
and for and on behalf of said Company as their free and voluntary
act and deed and the free and voluntary act and deed of said
Company, pursuant to due and proper authorization of the Board
of Directors of said Company in accordance with the law in
such case made and provided.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my notarial seal, on the day, month and year aforesaid.

Notary Public

My Commission expires:

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT made and entered into at Fort Wayne, Allen County, Indiana, on this 8th day of March, 1974, by and between the City of Fort Wayne, a municipal corporation of the State of Indiana (hereinafter referred to as "City"), and Indiana & Michigan Electric Company, an Indiana corporation (hereinafter referred to as "Company"),

W I T N E S S E T H:

WHEREAS, City and Company are negotiating the terms of a Lease Agreement pursuant to which City will lease to Company all of the electric utility system as now owned, operated and used and useful by the City in the rendering of electric service in and adjacent to Fort Wayne, Indiana, which system is described in more detail in the said Proposed Lease Agreement (hereinafter referred to as "Proposed Lease Agreement"); and

WHEREAS, paragraph 2.2 of the Proposed Lease Agreement contemplates that, prior to its execution, Company will have already agreed, in writing, to assume certain of City's obligations which shall be set forth in a separate written instrument which will be marked Exhibit "A" to the Proposed Lease Agreement; and

WHEREAS, City and Company are now in agreement as to which obligations ought to be provided for in Exhibit "A" to the Proposed Lease Agreement and this Assignment and Assumption

Agreement is executed for the sole purpose of becoming Exhibit "A" to the Proposed Lease Agreement.

NOW THEREFORE, as an inducement to each other to enter into and perform their respective obligations as set out in the Proposed Lease Agreement and in consideration of the mutual benefits to be derived by each of the parties hereto from the execution and performance of the Proposed Lease Agreement, the parties hereto represent and agree as follows:

1. As used herein, the term "Closing" shall have the same meaning given to it in the Proposed Lease Agreement.

2. City represents to Company that it has assigned the following enumerated work order numbers to the following described projects which will maintain, expand or improve the electric utility system which is defined as the "Leased Property" in the Proposed Lease Agreement (hereinafter individually referred to as "Work Order" and collectively referred to as "Work Orders"); that agreements, contracts and/or purchase orders or Work Orders have been, or, prior to the Closing, may be issued for the work to be performed, services to be rendered and material and equipment to be furnished to perform some or all of the above-described projects; and that the maximum liability of City under each Work Order is, and, as of the Closing, will be in the amount set opposite each respective Work Order below, to-wit:

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40808	Install demand metering FWHA St. Mary's and Margaret	\$ 1,000.
40794	Rebuild secondary east of Calhoun North and south of Lexington	1,000.

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40758	Change transformers and rebuild secondary in the alley south of Pittsburgh west of Edsall	1,200.
40696	Replace capacitor bank Center Street south of Elm	1,100.
40686	Accommodate I & M conversion to 12 kv west of Anthony Vance to St. Joe River Drive	1,800.
40673	Rebuild secondary east of Davis north south of Link	1,200.
40660	Install 4 rental lights at University Park Medical Clinic	1,000.
40641	Southeast Substation	260,000.
40640	South Substation	260,000.
40617	Demand metering at the Red Lobster	1,000.
40607	Replace six oil circuit breakers at Lawton with 2.5 million kv breakers. Old breakers to be used in substations	100,000.
40594	Orthodox Church on 5420 S. Anthony - transformers and new service	1,200.
40552	Transmission lines for South and Southeast Substations	120,000.
40441	Rebuild secondary south of DeWald west of Hoagland	1,800.
40386	Install transformers and split secondary north of Taber, west of Warsaw	800.
40366 and 39750	Install power to FWHA Tillman and Decatur Roads	5,000.
40294	Rebuild secondary and install transformers in the alley south of Eliza west of McCullouch	\$ 2,500.

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40284	Install transformers and rebuild secondary alley north of High west of St. Mary's	900.
40250	Rebuild primary to accomodate I & M 13.8 kv tower Hanna and U.S. 27	1,100.
40198	Reconductor primary east of Tacoma south of Pasedena	900.
40192	Install transformers and split secondary south of Colonial west of Plaza	1,400.
40182	Reconductor primary Eastbrook and North Clinton	1,200.
40156	Day Care Center, 315 Dalman, service pole, drops and metering	800.
40133	Move steel pole in the alley at the rear of 1829 Alliger	800.
40129	Reconductor primary Warsaw and Wiebke	600.
40100	Reroute 34.5 kv lines west of Lakeside Jr. High	3,000.
40065	Rebuild secondary and install new transformers north of Wiebke east of Clinton	800.
40054	Alley north of Scott east of Thompson install transformers and rebuild secondary	2,500
39988	New pole and line rearrangement Protective Coating on Birchwood	800.
39982	Alley rebuild west of Williams south of Calhoun	3,500.
39967	Rebuild secondary south of Hugh east of Ohio	800.
39961	Primary rebuild south side of Vance at Hobson	5,000.
39929	Sigrist Building (90%) complete	1,000. (remaining)

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
39877	Install transformers and rebuild secondary north of Drexel west of Holton	1,200.
39874	Rebuild secondary north of Drexel east of Reed	1,200.
39871	Rebuild secondary south of Branning west of Holton	900.
39870	South of Rudisill west of Hoagland install transformers and rebuild secondary	1,200.
39852	North of Vance between Ralston and Carew I & M 12 kv conversion	1,500.
39804	Alley south of Roy east of Raymond secondary rebuild and install transformers	1,500.
39797	Secondary rebuild and install transformers alley north of Sinclair east of Tyler	900.
39796	Alley north of Howell east of Tyler rebuild	900.
39774	Rebuild secondary install transformers south of Packard west of Clinton	1,500.
39773	Rebuild secondary install transformers north of Hamilton west of Oliver	1,400.
39747	Power for ARCO Rubber	5,000.
39723	South of New Haven Ave. east of Warren rebuild	800.
39713	Rebuild alley east of Hayden	1,000.
39702	South of McKee east of Hanna transformers and secondary rebuild	1,200.
39690	Freeman and Ontario transformers and secondary rebuild	800.
39681	State east of Byer install transformers and secondary rebuild	1,000.
39676	Rebuild Jefferson and Van Buren	1,400.

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
39670	Alley south of Third between Orchard and Barthold Rebuild and add transformers	2,200.
38932	Tertiary Treatment Plant - 1st Stage	20,000.
40863	University Park electric heated nursing home	7,000.
40779	Church of the Nazarene expansion on Fairfield	7,000.
40933	Lutheran Hospital expansion	60,000.
Number Not Yet Assigned	Water Pollution Control Plant expansion which may be done with HUD Funds - Second Stage	60,000.
"	Wallace - Lawton Park high line 34.5 kv	120,000.

3. Effective as of the Closing, City hereby assigns and sets over unto Company all of City's rights, title and interest in, to and resulting from any and all bids, proposals and offers received by it, agreements or contracts entered into by it and purchase orders or work orders issued by it for services to be rendered, work to be performed and/or materials or equipment to be furnished in accomplishing any and all of the above-described projects, without regard to whether such have been issued or received prior hereto or are issued or received between the date hereof and the Closing.

4. City represents and agrees that:

A. As of the Closing, there will be no defaults in, or breaches of the City's obligations as set forth in any of the said agreements, contracts or purchase orders or Work Orders; and

B. City will promptly pay, as and when they come due, all bills and invoices for services rendered, work performed and materials or equipment furnished prior to the Closing pursuant to any of the said agreements, contracts or purchase orders or Work Orders relating to any of the above enumerated projects.

C. All of the Work Orders enumerated above are for work to be performed, services to be rendered or materials or equipment to be furnished to the electric utility system which is defined as the "Leased Property" in the Proposed Lease Agreement.

5. Effective as of the Closing, Company assumes and agrees to pay and perform, to the extent of the amount of cost set opposite each Work Order in Paragraph 2, hereof, all of the City's obligations to parties not a party to this Agreement for any service rendered, work performed or materials or equipment furnished on or after the Closing, pursuant to contracts or agreements executed and delivered by City or purchase orders or Work Orders issued by City prior to the Closing, to accomplish any of the above-described projects.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana (City) has caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Mayor thereunto duly authorized, and attested by its City Clerk in behalf of the City, and its seal to be affixed; and Indiana &

Michigan Electric Company (Company) has likewise caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Executive Vice-President and attested by its Assistant Secretary thereunto duly authorized, and its corporate seal to be affixed, all on the day and year first above written; this Agreement being executed in duplicate.

CITY OF FORT WAYNE, INDIANA

By _____
(Ivan A. Lebamoff)
Mayor

ATTEST:

(Charles W. Westerman)
City Clerk

INDIANA & MICHIGAN ELECTRIC CO.

By _____
(R. M. Kopper)
Executive Vice-President

ATTEST:

(A. W. Lindahl)
Assistant Secretary

Transmittal Of A Resolution Adopted By The Common
Council Of The City Of Fort Wayne, Indiana Pertaining
To The Submission To The Qualified Voters Of
Said City Of Said Resolution Including A Definite
Proposed Contract For The Lease By The Indiana
& Michigan Electric Company Of The Municipal
Electric Utility Owned and Operated By
Said City

To: Mr. Robert D. Hanson
Clerk of The Allen Circuit Court
Secretary of the Allen County Election Board
Allen County Court House
Fort Wayne, Indiana

Dear Mr. Hanson:

The Common Council of the City of Fort Wayne, Indiana hereby transmits to you Declaratory Resolution No. R-13-74 adopted by said Common Council at a regular meeting on March 12, 1974 and including as a part of said Resolution a definite proposed contract for the lease to the Indiana & Michigan Electric Company of the municipal electric utility owned and operated by said City.

You are respectfully requested to take such steps as are necessary to insure the submission of said Resolution, including said definite proposed contract at a special election to be held in Fort Wayne, Indiana on the 7th day of May, 1974 in accordance with the laws of the State of Indiana in such case made and provided.

Charles W. Westerman, City Clerk

[] For Declaratory Resolution No. R-13-74 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to the Indiana & Michigan Electric Company.

[] Against Declaratory Resolution No. R-13-74 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to the Indiana & Michigan Electric Company.

Will appear on Ballot - Special Election on May 7, 1974

Prepared by Dave Keller and Delivered to Election Board on March 19, 1974

NOTICE OF SPECIAL ELECTION

Notice is hereby given that all Precincts in the City of Fort Wayne may vote on the following Referendum in a Special Election held on May 7, 1974:

"Are you in favor of Declaratory Resolution No. R-13-74 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to the Indiana and Michigan Electric Company?"

The Polls will be open from 6 A.M. to 6 P.M. Fort Wayne Time in every Precinct of Fort Wayne.

Robert D. Hanson, Clerk of the Allen
Circuit Court

Charles W. Westerman, City Clerk of
the City of Fort Wayne

17243-A
STATE OF INDIANA)
COUNTY OF ALLEN)
CITY OF FORT WAYNE)

SS:

CERTIFICATE

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify to the Common Council of the City of Fort Wayne, Indiana that:

1. Pursuant to the requirements of Declaratory Resolution No. R-13-74, adopted by you on March 12, 1974, a Special Election was called and held in the City of Fort Wayne, Indiana, on May 7, 1974 in which the following referendum was submitted to the qualified voters of said city: "Are you in favor of Declaratory Resolution No. R-13-74 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to Indiana & Michigan Electric Company?"

2. The said Special Election was called and held pursuant to notice and in accordance with all requirements of law to the best of my knowledge, information and belief.

3. The County Election Board and Ex officio Board of Canvassers of Allen County, Indiana, have certified to me that, in said Special Election, 17,539 votes were cast "FOR" and in favor of said Declaratory Resolution and 10,386 votes were cast "AGAINST" and opposed to said Declaratory Resolution; and that, accordingly, more than a majority of all the votes

cast in such election were in favor of said Declaratory Resolution.

WITNESS MY HAND AND THE SEAL OF THE CITY OF Fort Wayne, Indiana, this 11th day of June, 1974.

Charles B. Christman

Clerk of the
City of Fort Wayne, Indiana

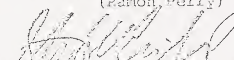
SEAL


The State of Indiana, Allen County, ss;

We, the undersigned, County Election Board and Ex officio Board of Canvassers, do hereby certify that the tabulation attached hereto and made a part hereof, and identified as and consisting of five "Canvassers Sheets For Special Election. On Referendum," is the full, true and complete statement of the votes cast at the Special Election held in the City of Fort Wayne ("City") on May 7, 1974 "FOR" and "AGAINST" Declaratory Resolution No. R-13-74 duly adopted on March 12, 1974 by the Common Council of the City; that from said tabulation, as taken from the certificates, poll sheets and tally sheets returned by the inspectors of the precincts in the City; it is hereby further certified that 17,589 votes were cast "For" and in favor of said Declaratory Resolution at said Special Election and 10,386 votes were cast "Against" and opposed to said Declaratory Resolution; and that, accordingly, more than a majority of all the votes cast at such election were in favor of said Declaratory Resolution.

10th IN WITNESS WHEREOF, we hereunto subscribe our names, this
day of June, 1974.


(Ramon Perry)


(Stephen W. Corder)


(Robert D. Hanson)

County Election Board and
Ex officio Board of Canvassers

Canvassers Sheet for *Special Election on RECONSTRUCTION*
~~Progress to the Republican Party State Convention~~

PRIMARY ELECTIC N, MAY 7, 1974

The State of Indiana, Allen County, ss:

We, the undersigned, hereby certify that the tabulation herein is the complete statement of votes cast at the *Special Election* ~~Primary Election~~ May 7, 1974, in the precincts herein set forth in said County for ~~the purpose of electing members of the Republican Party State Convention~~. And from the statement of said canvass and estimate drawn upon tabular form as herein set forth, ~~therefrom~~ it is hereby certified ~~that the same is correct and true~~.

In witness whereof, I herunto subscribe our names, this _____ day of May, 1974.

Stanley

County Election
 Board

Precinct	Number	Vote	Yes	No
Wayne 101	5-15	62	27	
" 102		34	47	
" 104		147	33	
" 105		52	24	
" 106		54	45	
" 107		38	45	
" 108		39	27	
" 109		74	35	
" 110		93	64	
" 111		65	46	
" 112		29	35	
" 100	R-N	21	32	
" 103	R-N	25	49	
" 104		45	55	
" 152		82	63	
" 153		104	53	
" 154		5	5	
" 155		32	32	
" 156		4	25	
" 157		42	29	
" 158		34	54	
" 159		59	51	
" 161		42	38	
" 162		44	43	
" 201		50	137	
" 202		130	110	
" 203	A	111	53	
" 204	B	106	42	
" 205		124	110	
" 206		200	78	
" 207		141	96	
" 208		122	81	
St. Joe 209	A	135	51	
" 210	B	129	49	
Wayne 211		132	120	
St. Joe 212	A	96	42	
" 213	B	109	40	
" 214	A	162	49	
" 215	B	162	63	
Wayne 216		84	64	
" 217		115	105	
" 218		116	55	
" 219		72	100	
" 220		182	79	
" 221		167	101	
Boonville 222	A	58	36	
" 223	B	87	25	
St. Joe 224		118	42	
" 225		147	12	

INVESTIGATION REPORT

INVESTIGATOR'S NAME

DATE

TIME

LOCATION

CHARACTER OF CASE

REPORT MADE AT

REPORT MADE BY

REPORT MADE FOR

REPORT MADE ON

REPORT MADE BY

REPORT MADE FOR

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Election		Vote	
Yes	No		
Wayne, 1916	114	72	
" 1920	214	85	
" 1924	164	73	
" 1928	119	53	
" 1932	153	65	
" 1936	191	67	
" 1940	222	86	
" 1944	126	107	
" 1948	51	114	
" 1952	39	119	
" 1956	174	60	
" 1960	138	71	
" 1964	20	5	
" 1968	29	1	
" 1972	73	86	
" 1976	115	104	
" 1980	123	67	
" 1984	129	75	
" 1988	21	27	
" 1992	95	72	
" 1996	65	36	
" 2000	153	107	
" 2004	114	71	
" 2008	151	124	
" 2012	107	45	
" 2016	154	73	
" 2020	167	61	
" 2024	146	52	
" 2028	143	48	
" 2032	127	56	
" 2036	109	57	
" 2040	181	125	
" 2044	174	41	
" 2048	182	17	
" 2052	142	54	
" 2056	112	70	
" 2060	134	78	
" 2064	85	77	
" 2068	120	105	
" 2072	126	96	
" 2076	32	47	
" 2080	44	27	
" 2084	51	115	
" 2088	110	102	
" 2092	82	92	
" 2096	123	102	
" 2100	67	81	
" 2104	105	57	

THIS STATE BOARD OF HEALTH HAS RECEIVED THE ABOVE REPORT FROM THE LOCAL HEALTH OFFICER

Municipality		Population		Deaths		Rate		Cause		Remarks	
Name	Address	Y	N	Y	N	Y	N	Y	N	Y	N
1st	1st	87	58								
2nd	2nd	91	102								
3rd	3rd	81	58								
4th	4th	77	56								
5th	5th	114	97								
6th	6th	113	87								
7th	7th	117	72								
8th	8th	77	64								
9th	9th	93	62								
10th	10th	104	85								
11th	11th	158	46								
12th	12th	129	85								
13th	13th	240	78								
14th	14th	177	79								
15th	15th	75	60								
16th	16th	137	69								
17th	17th	0	0								
18th	18th	0	0								
19th	19th	0	0								
20th	20th	0	0								
21st	21st	0	0								
22nd	22nd	0	0								
23rd	23rd	0	0								
24th	24th	0	0								
25th	25th	0	0								
26th	26th	0	0								
27th	27th	0	0								
28th	28th	0	0								
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37th	37th	0	0								
38th	38th	0	0								
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40th	40th	0	0								
41st	41st	0	0								
42nd	42nd	0	0								
43rd	43rd	0	0								
44th	44th	0	0								
45th	45th	0	0								
46th	46th	0	0								
47th	47th	0	0								
48th	48th	0	0								
49th	49th	0	0								
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91st	91st	0	0								
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93rd	93rd	0	0								
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97th	97th	0	0								
98th	98th	0	0								
99th	99th	0	0								
100th	100th	0	0								

1937 17, 571 16, 306



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

April 15, 1974

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of April 17 and April 24, 1974, in both the News Sentinel and Journal Gazette.

RE: Notice of Special Election

"Are you in favor of Declaratory Resolution No. R-13-74 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to the Indiana and Michigan Electric Company?"

Please send us four (4) copies of the Publisher's Affidavit.

Thank you.

Sincerely,

Charles W. Westerman
City Clerk

CWW/ne
ENCL: 1

City of Fort Wayne
(Governmental Unit)

To NEWS-SENTINEL Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) — number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

1

13

5

19

COMPUTATION OF CHARGES

19 lines, 1 column wide equals 19 equivalent lines at .288¢ cents per line \$ 5.47

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two)

TOTAL AMOUNT OF CLAIM

4.00

9.47

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5½ point

Number of insertions 2

Size of quad upon which type is cast 5½

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

V. E. Gerken

Date April 25, 19 74

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

Allen County ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned V. E. Gerken

that She is Clerk who, being duly sworn, says

NEWS-SENTINEL

DAILY

a newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two

time, the dates of publication being

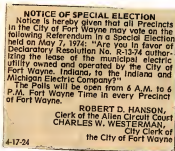
as follows: 4/17-24/74

V. E. Gerken

Subscribed and sworn to before me this 25th day of April, 19 74

Notary Public

My commission expires March 11, 1978



City of Fort Wayne
(Governmental Unit)

To JOURNAL-GAZETTE Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) — number of equivalent lines _____

Head number of lines _____ 1

Body number of lines _____ 13

Tail number of lines _____ 5

Total number of lines in notice _____ 19

COMPUTATION OF CHARGES

19 lines, 1 columns wide equals 19 equivalent lines at .2884 cents per line \$ 5.47

Additional charge for notices containing rule or tabular work (50 per cent of above amount) _____

Charge for extra proofs of publication (50 cents for each proof in excess of two) 4.00

TOTAL AMOUNT OF CLAIM \$ 9.47

DATA FOR COMPUTING COST

Width of single column 11 ems Size of type 5 1/2 point

Number of insertions 2 Size of quad upon which type is cast 5 1/2

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date April 25, 19 74Title CLERK

PUBLISHER'S AFFIDAVIT

State of Indiana }
ALLEN County } ss:Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time 1, the dates of publication being as follows:

4/17-24/74Subscribed and sworn to before me this 25th day of April, 19 74

Notary Public

My commission expires March 11, 1978

NOTICE OF SPECIAL ELECTION

Notice is hereby given that all Precincts in the City of Fort Wayne may vote on the following Referendum in a Special Election held on May 7, 1974: "Are you in favor of Ordinance Resolution No. R-1374 authorizing the lease of the municipal electric utility owned and operated by the City of Fort Wayne, Indiana, to the Indiana and Michigan Electric Company?"

The Polls will be open from 6 A.M. to 6 P.M. Fort Wayne Time in every Precinct of Fort Wayne.

ROBERT O. HANSON,
Clerk of the Allen Circuit Court
CHARLES W. WESTERMAN,
City Clerk of

4-17-74 OF
the City of Fort Wayne
T HERE